

## **Preparing for and Conducting Direct Examination**

- I. You must learn to overcome the 'No Leading Question' problem
  - A. The biggest problem in direct examination is not being able to lead and trying to obtain testimony from the witness who does not understand what it is you want him/her to say.
  - B. You must meet with the witness and prepare him/her so that non-leading questions are sufficient to evoke the testimony.
  - C. Your preparation must be fair.
    - 1. First find out objectively what happened and then work with the witness to effectively present the testimony.
    - 2. It is critical that the witness speaks in his/her own voice.
    - 3. Do NOT suggest what you want the witness to say.
- II. Prepare the Witness
  - A. Familiarize the witness with what is going to happen in Court. This removes the natural fear of the courtroom as much as possible
  - B. Prepare the witness psychologically.
    - 1. Note feelings the witness displays like wanting to help, aggression, anger, reticence, etc. Tell the witness about this and work with him or her to overcome that which will hurt.
      - a. There are good witnesses and bad witnesses in the jury's eyes.
      - b. Remember that a juror's impression of a witness is often as much a product of non-verbal communication as what the witness actually says.

2. Know what feelings you want conveyed during the testimony of the witness and decide how to achieve it.

C. Prepare the witness for cross-examination by telling the witness not to be afraid of the prosecutor, not to get angry, and to just tell it like it is.

1. Instruct your witness so that the testimony will be entirely accurate. (You may wish to give him a copy of printed instructions such as that attached as Appendix A.)

### III. Structure the Direct Examination

A. Make it short without omitting that which serves a purpose.

B. Use topic sentences to introduce a subject. Ask the questions on that subject, and then move to a new topic.

C. As much as possible use narrative questions to allow the witness to be the one on whom the attention is focused.

D. Direct attention to the witness.

1. "Will you tell the jury, Mr. Witness. . .?"

2. "Let me ask you this."

E. To get variety, ask a preliminary fact confirmation question and then ask the witness to follow up. (Short answer followed by a longer one.)

F. Use key phrases and words to paint a picture so the testimony will be remembered.

1. For example, "*Darted* out in front of the car."

G. Use demonstrative evidence.

H. Use the stretch-out technique of dividing a point into several questions to dramatize it.

I. End on a high note.

IV. Plan the Direct Examination Psychologically

A. Determine in advance the feeling you wish the testimony to convey.

B. Join the witness in sharing and conveying interest, intensity and feeling to the jury.